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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/519,572	12/28/2004	Hermann Grether	SMB-PT121 (PC 03 445 B US	7694
3624 7590 05/26/2009 VOLPE AND KOENIG, P.C. UNITED PLAZA, SUITE 1600 30 SOUTH 17TH STREET PHILADELPHIA, PA 19103			EXAMINER GORMAN, DARREN W	
			ART UNIT 3752	PAPER NUMBER
			MAIL DATE 05/26/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/519,572

**Applicant(s)**

GRETHER, HERMANN

**Examiner**

Darren W. Gorman

**Art Unit**

3752

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 34-63.66 and 67 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 34-63.66 and 67 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 4, 2009 has been entered.

### ***Response to Amendment***

2. The declaration under 37 CFR 1.132 filed May 4, 2009, in combination with the amendment(s) to claim 34, is sufficient to overcome the rejection of claims 34-60 and 64-67 based upon the prior art to Grether et al. (US Patent No. 6,152,182) as applied to the claims under 35 U.S.C. 102(b) in the office action mailed November 3, 2008.

### ***Double Patenting***

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 34-63, 66 and 67 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 and 12-32 of copending Application No. 10/523,574. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of the copending application include each of the essentially recited structural components of the instant application claims, including a two-part snap-fit housing, a perforated plate jet separating device formed in one-piece with one of the housing parts, mountable disc-shaped mounted elements having ridges arranged in a grid or mesh which cross at junction points in a single plane, and a flow regulator, and the interrelated details thereof.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### *Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 34-42, 44-60, 66 and 67 are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent Document, DE 20006163 U1.

DE 20006163 U1 shows a sanitary component (1) (see Figures 1-5) having a jet regulating device (3) in an interior of a two-part (5, 6), snap-fit mounting housing (4), the jet regulating device comprising a plurality of disc-shaped mounted elements (10) mountable/insertable within an outflow-side housing part (6) up to a stop or support (see Figure 4), the mounted elements having ridges oriented transverse to a direction of flow, between which passageways are defined (see Figure 5), wherein the ridges are arranged in the form of a grid or mesh, which cross at junction points located in a single plane (see again Figure 5). As to the recited term “ridges” with respect to the mounted element(s) of the instant claims, it is reasonable to interpret such a term to encompass the structural configuration of a typical screen element, particularly since Applicant’s own specification (see paragraph [0047]) uses the term “ridges” to describe the screen shown in at least Figures 11a and 11b of the instant application. Thus, by defining the claim term “ridges”, as broadly and reasonably interpreted in view of the originally filed disclosure of the instant application, it is reasonable to apply a typical screen element, such as those (10) shown in DE 20006163 U1, to the recited mounted element(s) of the instant claims. DE 20006163 U1 also shows a jet separating device (2) formed as a perforated plate (see Figure 3) and located inside an inflow-side housing part (5) of the two-part mounting housing such that the jet regulating device (3) is located downstream from the jet separating device (2), wherein jet separating device is integral with the inflow-side housing part. DE 20006163 U1 further shows the sanitary component including a flow regulator (11) comprising passage openings located at a discharge end of the mounting housing (see Figures 1, 4 and 5).

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 61-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over German Patent Document DE 20006163 U1, in view of Flieger, USPN 6,588,682.

DE 20006163 U1 shows/discloses all of the recited limitations as set forth in claim 55, however DE 20006163 U1 is silent as to including at least one soft and/or water-repellant surface on the housing part in the area of a water discharge opening, or forming the housing part in at least the area of the water discharge opening from an elastic material.

Flieger shows a sanitary component and discloses that other prior art sanitary components are often subject to calcification at their respective water discharge openings. Flieger teaches forming at least the outlet portion of the device from an elastic material, thus permitting a user to easily and effectively clean the outlet portion with a finger tip (see Figure 1 and column 5, lines 30-53), and Flieger also discloses applying a soft and/or water-repellant surface to the outlet portion to substantially prevent wetting of the outlet portion, thus reducing or eliminating calcification (see column 5, line 54 through column 6, line 18).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form at least the housing part in the area of the water discharge opening of the device of DE 20006163 U1 from an elastic material, and/or coat at least the housing part

in the area of the water discharge opening of the device of DE 20006163 U1 with a soft and/or water-repellant surface, as taught by Flieger, thus permitting a user to easily and effectively clean the outlet portion with a finger tip, and/or thus reducing or eliminating calcification at the water discharge opening.

### ***Response to Arguments***

9. Applicant's arguments, see pages 13-14 of the "Remarks/Arguments" section of the response filed May 4, 2009, with respect to the prior art rejections of claim 34 and its dependents as set forth in the office action mailed November 3, 2008 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Gorman whose telephone number is 571-272-4901. The examiner can normally be reached on M-F 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Len Tran can be reached on 571-272-1184. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Darren W Gorman/  
Primary Examiner, Art Unit 3752

/D. W. G./  
Primary Examiner, Art Unit 3752